

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA**

SIMPLY WIRELESS, INC.,

Plaintiff,

vs.

T-MOBILE US, INC. and
T-MOBILE USA, INC.

Defendants.

NO. 21-CV-00597-AJT-JFA

DEFENDANTS' MOTION FOR SUMMARY JUDGMENT

Defendants T-Mobile US, Inc. and T-Mobile USA, Inc. (collectively, “Defendants”), by and through their undersigned counsel, hereby move for:

1. Summary judgment of no infringement of any rights in the phrase “Simply Prepaid” in favor of T-Mobile as to Count II (Infringement under Virginia Code § 59.1-92.12), Count III (Unfair competition, passing off, trade name infringement, trademark infringement and false designation of origin under 15 U.S.C. § 1125(a)), Count IV (Unfair competition, passing off, trade name infringement and trademark infringement under Virginia common law), and Count VI (Registration of T-Mobile’s Simply Prepaid mark), on the ground that Plaintiff has failed to establish that it owns a valid trademark in the phrase “Simply Prepaid.”

2. Summary judgment of no dilution of the Simply Wireless marks in favor of T-Mobile as to Count V (Trademark dilution under 15 U.S.C. §1125(c)).

3. Summary judgment of no secondary meaning for the phrase “Simply Prepaid” as to Count II (Infringement under Virginia Code § 59.1-92.12), Count III (Unfair competition, passing off, trade name infringement, trademark infringement and false designation of origin under 15 U.S.C. § 1125(a)), Count IV (Unfair competition, passing off, trade name infringement and trademark infringement under Virginia common law), and Count VI

(Registration of T-Mobile's Simply Prepaid mark).

4. Summary judgment of no infringement of the Simply Wireless marks and any rights in the phase "Simply Prepaid" in favor of T-Mobile as to Count I (Infringement under 15 U.S.C. § 1114), Count II (Infringement under Virginia Code § 59.1-92.12), Count III (Unfair competition, passing off, trade name infringement, trademark infringement and false designation of origin under 15 U.S.C. § 1125(a)), Count IV (Unfair competition, passing off, trade name infringement and trademark infringement under Virginia common law), and Count VI (Registration of T-Mobile's Simply Prepaid mark), on the ground that there is no likelihood of confusion.

5. Summary judgment of no disgorgement under 15 U.S.C. §1117(a), or in the alternative, that the issue of disgorgement shall be tried to the bench.

6. Summary judgment of no willful infringement in favor of T-Mobile as to Count I (Infringement under 15 U.S.C. § 1114), Count II (Infringement under Virginia Code § 59.1-92.12), Count III (Unfair competition, passing off, trade name infringement, trademark infringement and false designation of origin under 15 U.S.C. § 1125(a)), Count IV (Unfair competition, passing off, trade name infringement and trademark infringement under Virginia common law), and Count V (Trademark dilution under 15 U.S.C. §1125(c)).

The grounds for these motions are set forth in the Opening Brief in Support of Defendants' Motion for Summary Judgment, filed contemporaneously herewith.

Dated: January 18, 2022.

Respectfully submitted,

/s/ Brittany Blueitt Amadi

Brittany Blueitt Amadi (Bar No. 80078)

Joss Berteaud (*Pro Hac Vice*)

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Attorneys for Defendants T-Mobile, US, Inc. and T-Mobile USA, Inc.

CERTIFICATE OF SERVICE

I hereby certify that on January 18, 2022, I electronically served the foregoing counsel of record as listed on the CM/ECF system.

/s/ Brittany Blueitt Amadi